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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,888	08/06/2001	Wolfgang Biesel	2565/89	9046

26646 7590 08/25/2003

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NEW YORK, NY 10004

EXAMINER
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KIM, SUN U

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/922,888

Applicant(s)

BIESEL, WOLFGANG

Examiner

John Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-25 is/are allowed.
- 6) ☒ Claim(s) 11-13 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 14-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- ~~11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.~~
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/235,964.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Claims 11-13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,655,123 (hereinafter referred to as Judson et al). Judson et al teach a blood centrifugation device comprising a centrifuge (52) having a blood suspension inlet (90), a waste line and a concentrated cell outlet line with a concentrated cell pump (66) and a diluting device (76) in fluid connection with the concentrated cell outlet line via a plasma outlet line from centrifuge (52) for delivering plasma e.g. physiologic solution via a plasma pump (70) wherein plasma combines with the concentrated red blood cells to inherently dilute concentrated red blood cells because plasma is of a lighter fluid than red blood cells (see figure 1; col. 7, line 29 - col. 10, line 57)(claims 11-13, 20). Regarding claims 21-22, the recitations that the device processes cell suspensions collected intraoperatively or post-operatively are an intended use and these recitations are not given patentable weight in the apparatus claims.

2. Claims 11-12 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,419,759 (hereinafter referred to as Naficy). Naficy teaches a blood centrifugation device comprising a centrifuge (14) having a blood suspension inlet, a waste line and a red concentrated cell outlet line and a diluting device i.e. intravenous fluid source in fluid connection with the red concentrated cell outlet line via a intravenous fluid solution line (22) for delivering intravenous fluids i.e. physiologic solution wherein intravenous fluids combines with the concentrated red blood cells to inherently dilute concentrated red blood cells because intravenous fluid is of a lighter fluid than red blood cells (see figure 1; col. 12, line 61 – col. 13, line 4). Regarding claims 21-22, the recitations that the device processes cell suspensions collected intraoperatively or post-operatively are an intended use and these recitations are not given patentable weight in the apparatus claims.

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3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Judson et al. or Naficy. Claim 19 essentially differs from the apparatus of Judson et al. or Naficy in reciting that the separation unit has a shape selected from the group consisting of a ring or a spiral. It would have been an obvious matter of design choice to modify the separation unit in a shape of ring or spiral, since applicant has not disclosed that the separation unit in a shape of ring or spiral solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other shape such as square or diamond.

4. Claim 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 23-25 are allowed.

6. Applicant's arguments with respect to claims 11-25 have been considered but are moot in view of the new ground(s) of rejection.

~~7. Applicant's amendment necessitated the new ground(s) of rejection presented in this~~

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (703) 308-2350. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (703) 308-0457. The fax phone number for official response is (703) 872-9306.

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

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**John Kim**  
**Primary Examiner**  
**Art Unit 1723**

J. Kim  
August 22, 2003